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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: JAN 24 2008

IN RE:



APPLICATION: Application for Waiver of of the Foreign Residence Requirement under Section 212(e)
of the Immigration and Nationality Act, 8 U.S.C. § 1182(e).

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the matter will be remanded to the director to request a section 212(e) waiver recommendation from the Director, U.S. Department of State, Waiver Review Division (WRD).

The record reflects that the applicant is a citizen of Lebanon who is subject to the two-year foreign residence requirement under section 212(e) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(e). The applicant was last admitted into the United States in J1 nonimmigrant exchange status on April 30, 2006. The applicant's two children are U.S. citizens and the applicant seeks a waiver of the two-year foreign residence requirement based on exceptional hardship to his children.

The director determined that the applicant failed to establish his children would experience exceptional hardship if the applicant fulfilled the two-year foreign residence requirement in Lebanon. *Director's Decision*, at 4, dated March 21, 2007. The application was denied accordingly.

On appeal, counsel asserts that the director did not take the evidence into account and made unfounded assumptions in her decision. *Form I-290B*, dated March 21, 2007.

The record includes, but is not limited to, counsel's brief, the applicant's statement, photographs of the applicant's family, a psychological evaluation and medical documents for the applicant's children, and country conditions information on Lebanon. The entire record was considered in rendering this decision.

Section 212(e) of the Act states in pertinent part that:

(e) No person admitted under section 101(a)(15)(J) or acquiring such status after admission

(i) whose participation in the program for which he came to the United States was financed in whole or in part, directly or indirectly, by an agency of the Government of the United States or by the government of the country of his nationality or his last residence,

(ii) who at the time of admission or acquisition of status under section 101(a)(15)(J) was a national or resident of a country which the Director of the United States Information Agency [now the Director, U.S. Department of State, Waiver Review Division (WRD), "Director"] pursuant to regulations prescribed by him, had designated as clearly requiring the services of persons engaged in the field of specialized knowledge or skill in which the alien was engaged, or

(iii) who came to the United States or acquired such status in order to receive graduate medical education or training, shall be eligible to apply for an immigrant visa, or for permanent residence, or for a nonimmigrant visa under section 101(a)(15)(H) or section 101(a)(15)(L) until it is established that such person has resided and been physically present in the country of his nationality or his last residence for an aggregate of a least two years following departure from the United States: Provided, That upon the favorable recommendation of the Director, pursuant to the request of an interested United States Government agency (or, in the case of an alien described in

clause (iii), pursuant to the request of a State Department of Public Health, or its equivalent), or of the Commissioner of Immigration and Naturalization [now, Citizenship and Immigration Services, CIS] after he has determined that departure from the United States would impose exceptional hardship upon the alien's spouse or child (if such spouse or child is a citizen of the United States or a lawfully resident alien), or that the alien cannot return to the country of his nationality or last residence because he would be subject to persecution on account of race, religion, or political opinion, the Attorney General [now the Secretary, Homeland Security, "Secretary"] may waive the requirement of such two-year foreign residence abroad in the case of any alien whose admission to the United States is found by the Attorney General [Secretary] to be in the public interest except that in the case of a waiver requested by a State Department of Public Health, or its equivalent, or in the case of a waiver requested by an interested United States government agency on behalf of an alien described in clause (iii), the waiver shall be subject to the requirements of section 214(I): And provided further, That, except in the case of an alien described in clause (iii), the Attorney General [Secretary] may, upon the favorable recommendation of the Director, waive such two-year foreign residence requirement in any case in which the foreign country of the alien's nationality or last residence has furnished the Director a statement in writing that it has no objection to such waiver in the case of such alien.

In *Matter of Mansour*, 11 I&N Dec. 306 (BIA 1965), the Board of Immigration Appeals stated that,

Therefore, it must first be determined whether or not such hardship would occur as the consequence of her accompanying him abroad, which would be the normal course of action to avoid separation. The mere election by the spouse to remain in the United States, absent such determination, is not a governing factor since any inconvenience or hardship which might thereby occur would be self-imposed. Further, even though it is established that the requisite hardship would occur abroad, it must also be shown that the spouse would suffer as the result of having to remain in the United States. Temporary separation, even though abnormal, is a problem many families face in life and, in and of itself, does not represent exceptional hardship as contemplated by section 212(e), supra. (Quotations and citations omitted).

In *Keh Tong Chen v. Attorney General of the United States*, 546 F. Supp. 1060, 1064 (D.D.C. 1982), the U.S. District Court, District of Columbia stated that:

Courts deciding [section] 212(e) cases have consistently emphasized the Congressional determination that it is detrimental to the purposes of the program and to the national interests of the countries concerned to apply a lenient policy in the adjudication of waivers including cases where marriage occurring in the United States, or the birth of a child or children, is used to support the contention that the exchange alien's departure from his country would cause personal hardship. Courts have effectuated Congressional intent by declining to find exceptional hardship unless the degree of hardship expected was greater than the anxiety, loneliness, and altered financial circumstances ordinarily anticipated from a two-year sojourn abroad. (Quotations and citations omitted).

The first step required to obtain a waiver is to demonstrate that a qualifying relative would suffer exceptional hardship upon relocation to Lebanon for two years. Counsel states that the applicant's children will be at great personal risk if they move to Lebanon. *Brief in Support of Appeal*, at 2, dated May 17, 2007. Counsel states that the applicant's children are likely to speak English among themselves and this would bring attention to them. *Id.* at 2. The record includes numerous articles and Department of States notices (including a travel warning) which detail anti-American sentiment, safety issues for U.S. citizens and the evacuation of U.S. citizens during the 2006 Israeli-Lebanese conflict. The AAO notes that recent Department of State reports, based on ongoing political tensions, continue to advise U.S. citizens to defer travel to Lebanon and to exercise particular caution in certain Beirut suburbs and in areas south of the Litani River the location of Bentjbeil, the applicant's place of birth.

In regard to medical issues, the record reflects that the applicant's older child twice developed a maculo-papular rash with nodules over his entire body during visits to Lebanon, he did not improve completely while in Lebanon and he is expected to suffer the same reaction upon return to Lebanon in the spring or summer. *Letter from [REDACTED]*, dated June 2006.

The applicant states that his older child has speech problems, his younger child is presenting the same language delays, they both require speech therapy, and they will suffer permanent educational setbacks if they move to Lebanon where services are not readily available. *Applicant's Statement*, at 4, dated October 2, 2006. The applicant's children's psychological evaluation indicates that the older child is speech and language delayed in Arabic and English, and the younger child is presenting with the same delays. *Psychological Evaluation*, at 3, dated July 10, 2006. Although the input of any mental health professional is respected and valuable, the submitted evaluation is of limited evidentiary value. The AAO notes that the evaluation is based on a single interview with the applicant's children and that the record does not demonstrate that the psychologist who prepared it has the necessary expertise in speech pathology to diagnose language or speech deficits in children. Moreover, there is no evidence that the applicant's children are currently receiving speech therapy or that it would be unavailable in Lebanon.

Counsel asserts that the applicant's children will suffer exceptional economic hardship should they reside in Lebanon for two years. *Brief in Support of Appeal*, at 4. The record includes newspaper articles related to the high unemployment rate and low incomes of physicians in Lebanon. However, the record is not clear as to whether the applicant or his spouse would be unable to obtain employment in Lebanon and if their salary would cause economic hardship.

Although the applicant's economic and speech therapy claims are not sufficiently documented, the AAO notes the unique security issues for U.S. citizens in Lebanon, as evidenced by the Department of State Travel Warning, the recent Israeli-Lebanese conflict, and ongoing domestic political tensions. As such, exceptional hardship would be imposed on the applicant's five and three year old U.S. citizen children if they resided in Lebanon for two years.

The second step required to obtain a waiver is to demonstrate that the applicant's children would suffer exceptional hardship if they remained in the United States during the two-year period. As the applicant's spouse is also in J1 status and is required to return home for two years, the applicant's children would be in the United States without their parents. By default, this situation would constitute exceptional hardship to the children if they remained in the United States.

The burden of proving eligibility for a waiver under section 212(e) of the Act rests with the applicant. *See Section 291 of the Act, 8 U.S.C. § 1361.* The AAO finds that in the present case, the applicant has met his burden. The AAO notes, however, that a waiver under section 212(e) of the Act may not be approved without the favorable recommendation of the WRD. Accordingly, this matter will be remanded to the director so that he may request a WRD recommendation under 22 C.F.R. § 514. If the WRD recommends that the application be approved, the secretary may waive the two-year foreign residence requirement if admission of the applicant to the United States is found to be in the public interest. However, if the WRD recommends that the application not be approved, the application will be re-denied with no appeal.

ORDER: The appeal is sustained and the record of proceeding is remanded to the director for further action consistent with this decision.